the California Department of Health Services (DHS). *[14:1 CRLR 165]* OMBC is required to adopt the DHS guidelines and ensure that its licensees are notified that knowing failure to follow them constitutes grounds for disciplinary action. Although OMBC had previously approved a motion directing the preparation of infection control guidelines, the Board's fiscal crisis has prevented action.

Also at the July meeting, OMBC elected public member Ronald Kaldor to serve as President, Richard Bond, DO, to serve as Vice-President, and Laurie Woll, DO to serve as Secretary/Treasurer.

FUTURE MEETINGS

December 3 in Sacramento.

PUBLIC UTILITIES COMMISSION

Executive Director:
Neal J. Shulman
President: Daniel Wm. Fessler
(415) 703-1487

The California Public Utilities Commission (PUC) was created in 1911 to regulate privately-owned utilities and ensure reasonable rates and service for the public. Today, under the Public Utilities Act of 1951, Public Utilities Code section 201 *et seq.*, the PUC regulates the service and rates of more than 43,000 privately-owned utilities and transportation companies. These include gas, electric, local and long distance telephone, radio-telephone, water, steam heat utilities and sewer companies; railroads, buses, trucks, and vessels transporting freight or passengers; and wharfingers, carloaders, and pipeline operators. The Commission does not regulate city- or district-owned utilities or mutual water companies.

It is the duty of the Commission to see that the public receives adequate service at rates which are fair and reasonable, both to customers and the utilities. Overseeing this effort are five commissioners appointed by the Governor with Senate approval. The commissioners serve staggered six-year terms. The PUC's regulations are codified in Chapter 1, Title 20 of the California Code of Regulations (CCR).

The PUC consists of several organizational units with specialized roles and responsibilities. A few of the central divisions are: the Advisory and Compliance Division, which implements the Commission's decisions, monitors compliance with the Commission's orders, and advises the PUC on utility matters; the Division of Ratepayer Advocates (DRA), charged with representing the long-term interests of all utility ratepayers; and the Division of Strategic Planning, which examines changes in the regulatory environment and helps the Commission plan future policy. In February 1989, the Commission created a new unified Safety Division. This division consolidated all of the safety functions previously handled in other divisions and put them under one umbrella. The Safety Division is concerned with the safety of the utilities, railway transports, and intrastate railway systems.

Members of the Commission include Daniel Wm. Fessler, President, Patricia M. Eckert, Norman D. Shumway, P. Gregory Conlon, and Jessie J. Knight, Jr.

MAJOR PROJECTS

Public Comment on the PUC's Proposed Restructuring of California's Electric Services Industry. In April 1994, the PUC outlined a major proposal to alter its method of regulating electric utilities. *[14:2&3 CRLR 215; 14:1 CRLR 170]* The proposed new approach isolates for close regulation the necessarily monopolistic *transmission* of electricity (*e.g.*, through power lines and transformers), and deregulates power *generation*. The proposal is based on the theory that, with the advent of smaller and varied types of generators able to produce competitively priced electricity and the transferability of electricity over greater distances, *generation* is not necessarily a "natural monopoly," but can be separated out for competition—which could enhance efficiency and lower costs. The PUC has argued that cheaper power going to other states is one reason California consumers pay rates which are 50% higher than the United States average.

Two elements of the proposed plan involve, respectively, "retail wheeling" and "performance-based ratesetting." Retail wheeling allows the consumer to buy power from alternative power generators—the local utility, an out-of-town utility, a power broker, or an independent producer. The selected supplier would deliver the electricity to the local utility, and the local utility would distribute or "wheel" it to the customer or business through the existing network of power lines. The local utility would receive a fee for delivering the power, while the supplier would receive a larger fee for generation costs. Local utilities which do not offer a competitive price for power generation would become little more than the transportation link in the power chain. This option, dubbed by the PUC "direct access," would be available to consumers according to the following timetable:

–Large industrial consumers could become direct access consumers on January 1, 1996.

–Commercial consumers receiving service at the primary level could become direct access consumers on January 1, 1997.

–Commercial consumers receiving service at the secondary level could become direct access consumers on January 1, 1998.

–All commercial consumers could become direct access consumers after January 1, 1999.

–All remaining consumers could become direct access consumers after January 1, 2002. Alternatively, consumers may continue to receive electricity service from their local utility in the traditional manner, with prices regulated by the PUC.

The second part of the Commission's plan would implement performance-based ratesetting (PBR). PBR allows the utilities' rates to be set according to an average market price for electricity. If the utility is able to generate or purchase electricity for less than the benchmark price, the savings are split between the ratepayers and the utility's stockholders. This approach eliminates the current ratesetting system which examines the utility's costs item by item and sets rates to allow the utility a reasonable profit. Under PBR, if the utility does not become more efficient, the losses are split between ratepayers and stockholders as well. The system is intended to provide an incentive for the utilities to streamline their operations and increase their efficiency. Under the Commission's proposal, utilities would be allowed to collect the costs of past uneconomic generating assets developed under the old regulatory framework from both direct access and traditional consumers. Currently, three of the major electricity utilities in California have submitted proposals for PBR, and the Commission recently approved an extension of the two-year trial PBR program for San Diego Gas & Electric Company (*see below*).

Since its April 20 introduction of the proposal, the Commission has been holding public hearings and inviting comment on the precedent-setting plan. The state's two major utility consumer groups—San Diego-based Utility Consumers' Action Network (UCAN) and San Francisco-based Toward Utility Rate Normalization (TURN)—submitted comments or testified at the hearings. Both organizations predicted discrimination against residential ratepayers who have the fewest alternative options. UCAN and TURN contend

that where some customers have competitive alternatives and others do not, producers exploit those with no choice to gain competitive advantage with those being courted by others. Where energy providers have high fixed costs and must operate at full capacity, the large industrial power users are likely to get the benefit of marginal cost pricing—very low prices just over the out-of-pocket cost of fuel or other generation means.

In other words, the consumer groups argued that it would be irrational for producers *not* to price at a marginal cost level for industrial and then commercial customers as each is phased into competitive choice. Until choice is allowed, the utility has a captive consumer, but as each group is phased in and allowed to choose a nonutility power source competing with utility power sources, that consumer will be lost to the utility if its price cannot be matched. Where a utility is operating an oil, nuclear, hydro or other plant at close to full capacity, any reduction in volume means that the same overhead costs must be paid by the smaller group of customers remaining, meaning higher unit costs and higher rates. The only way to maintain efficiencies for the benefit of all ratepayers is to lower prices to retain those customers able to leave—down to the actual marginal (out-of-pocket) cost of burning the fuel or otherwise providing the power. This means that the group last in line—residential consumers—will bear most of the overhead and other fixed costs as the process unwinds.

Further, if marginal cost pricing fails or is disallowed by the Commission, and a utility powerplant loses so many large customers it is "uneconomic," the remaining captive ratepayers may have to pay the cost of maintaining a plant operating at low utilization, or bail out the utility by amortizing and paying the costs of abandoning an uneconomic plant. TURN has asked the PUC to reject "retail wheeling" unless it can demonstrate that it will serve the interests of small business and residential ratepayers. Alternatively, TURN proposes to foster competition at the wholesale level, requiring the monopoly utilities to buy electricity at the lowest available price from independent power producers rather than expanding their own plants. Under this alternative scenario, competitive power would be phased in as current plants age and as increased population and use creates new demand; the savings achieved would be passed onto all ratepayers, not merely those placed first in line and advantageously presented with the momentous bargaining power that alternative choices create.

On June 14 and 15, the Commission held two days of hearings on the plan at the Los Angeles Convention Center, focusing on its likely effects on low-income assistance programs, economic development programs, low-emission vehicle programs, fuel diversity, demand-side management, energy conservation, and renewable resources. The listed topics involve areas of current or possible regulatory "cross-subsidy," where rates are designed to provide socially beneficial incentives. Critics at the hearings argued that, in some cases, as with energy conservation and renewable resources, cross-subsidies may correct serious free market flaws—for example, the external long-range costs implicit in the exhaustion of nonrenewable resources. Where the revised system eschews cross-subsidies in favor of straight efficiency and lowest costs, it does not calculate the fact that the market's lowest cost may not be the true cost; there are costs the producers may be passing onto future generations which an imperfect marketplace will fail to assess or adequately ameliorate.

Utilities are currently required by regulation to obtain a percentage of their electricity from alternative sources which are more environmentally friendly than traditional fossil fuel-based sources, including a new generation of natural gas turbine generators which promise high cost-efficiency. Such alternative sources traditionally carry higher generation costs in the open market, resulting in less energy being generated through renewable, pollution-free, environmentally preferable methods where the market and legal systems fail to assess producers the total and long run costs their production methods impose on others. Environmental critics have rejected one Commission alternative as a public relations distraction: allowing consumers to check a box on their electricity bill saying that they want their energy generated by alternative sources. A market-based alternative suggested by environmentalists would assess a tax or cost to each method of production based on the additional and currently unassessed costs each imposes on the environment or on future generations; they argued that such a solution allows the market to allocate resources efficiently, while correcting for its external cost avoidance flaw.

Environmentalists and labor groups expressed additional concerns that some of the cheaper power available through deregulation will come from producers in other states with minimal environmental standards and which burn nonrenewable resources, resulting in increased pollution. Utilities countered that substantial energy in California comes from oil-generated sources, and additional emissions in non-California locations is more benign than in populous California, with its automobile exhaust and atmospheric inversion layer problems.

On June 15, the Commission released a letter from U.S. Energy Secretary Hazel R. O'Leary, who questioned the Commission's ability to unilaterally implement its far-reaching plan given the jurisdiction of federal regulators. Under the 1992 Energy Policy Act, the Federal Energy Regulatory Commission (FERC) has jurisdiction over wholesale transmission rates, while the PUC has jurisdiction over retail rates. The authority problem is raised directly by the PUC plan, as advantageous wheeling would appear to involve FERC jurisdiction and it is unclear who has jurisdiction over "retail wheeling." Susan Tierney, assistant secretary for domestic and international energy policy with the Department of Energy, buttressed O'Leary's letter with testimony at the June 15 hearing, describing the plan as "a high-risk legal position for California." Commission staff contended that the plan was not offered as "an order" because of the need to cooperate and coordinate with many actors, including the federal jurisdiction.

The Commission held additional full-panel hearings throughout the summer and fall of 1994, including hearings on July 1 in Sacramento, August 4 in San Francisco (focusing on wholesale electric markets), and September 7 in San Diego. Interested parties appearing at the hearings have included representatives of Pacific Gas & Electric Company (PG&E), Southern California Edison (SCE), San Diego Gas & Electric Company (SDG&E), and the Consumer Alliance for Electricity Rate Reductions (CAERR), a disparate group including TURN, UCAN, the California Large Energy Users Association, and the Agricultural Energy Consumers Association. Two additional and important consumer organizations weighed in on the PUC's plan during the late summer: Consumer Action, a San Francisco consumer organization, and Consumers First, a coalition of California ratepayers started by Jim Conran, former Manager for Consumer Affairs and Public Issues at Pacific Bell and subsequently Director of the state Department of Consumer Affairs. On August 31, they held a joint forum in San Diego to brief consumer organizations on the issues prior to the Commission's September 7 San Diego hearing.

At the hearings, PG&E argued for a further delay of six years, until 2008, to phase in residential consumers, and promised in return that the ratepayers would not

have to pay for the transition costs of uneconomic past investments (such as the Diablo Canyon Nuclear Powerplant), and that rates would not be increased for retail customers. SDG&E argued for a more modest delay (until 2005), and for the creation of a competitive wholesale power-generation market, including a wholesale pool of resources.

CAERR argued that the utilities' proposed extensions would mean an additional six years where residential consumers are likely to bear disproportionately high rates given their lack of choice and the economic facts discussed above, and that if costs decline under the plan, residential ratepayers should be paying less, not paying the same amount to disproportionately cover utility fixed costs while industry and commercial users pay much less. Further, CAERR argued that by standing last in line, residential consumers—who already lack the bargaining power of large industrial users—would find advantageous terms foreclosed and be left with the producers rejected by the large users.

CAERR released a report prepared by Economic Sciences Corporation (ESC), an independent consulting firm, which compares operating costs of California's utilities to 100 comparable utility companies in other states. ESC's report concluded that California consumers paid $6.4 billion more in 1992 than the average rate of the other 100 utilities. CAERR called upon all California utilities to cut electric rates by 25% by 2000. In response, the utilities contended that California's high rates are the result of excessive regulation, and the inability to use cheap coal-fired generators.

SCE argued that retail competition should be postponed indefinitely. The utility proposed the creation of an independent energy purchasing company (called "POOLCO") which would buy from all comers—utilities and independents—to stimulate the wholesale market for energy.

The CAERR group of energy consumers does not appear to oppose the concept of applying competition to energy production and purchase; its focus appears to be on the details which it contends favor the utilities and industrial users. CAERR objects particularly to the abandonment of conservation incentives for free market principles of maximum consumption, the undermining of various extant cross-subsidies for low-income people, and such add-ons as a "competition transition charge" applied to users of retail wheeling to compensate utilities for their displacement costs and likely to inhibit or even preclude cost savings. CAERR also argues that the price design which distinguishes what the plan terms "direct access" customers (those able to contract and wheel) from "utility service" customers (residential and other customers dependent upon the utility) favors further the large users. CAERR's message is that the Commission, in a frenzy to obtain the political support of (or to neutralize) the utilities and industry, is prepared to give them the brunt of the system's gain.

Commission staff contend privately that the system's gain is sufficient to afford advantage to all, and that if powerful interests receive a disproportionate benefit in the short run, in the process they have surrendered significant monopoly power—henceforward subject to marketplace efficiencies and discipline. The Commission's argument is that add-on cross-subsidies, conservation, and external cost assessment are not precluded where strong regulatory presence remains and the distribution system remains subject to regulation. Perhaps a short-run reward goes to the utilities who will suffer extraordinary displacement cost and risks, others do not affirmatively lose in the bargain, and all will gain substantially once competition is established over the long run.

In addition to the utilities, environmental and consumer groups, major power users, and the federal government, the passage of ACR 143 (Sher) (Chapter 148, Resolutions of 1994) portends the California legislature's entry into the electric deregulation debate. ACR 143 creates the Joint Oversight Committee on Lowering Electricity Costs, to be chaired by respected Assemblymember Byron Sher. The Committee may develop legislation which could facilitate—or impede—the Commission's proposed deregulation plan, and which will specifically examine performance-based ratemaking, direct access to markets in other states (and federal law conflicts), and proposed transition surcharges and their allocation among classes of customers. The Committee will report on the "financial status" of the utilities, and submit options for funding low-income ratepayer assistance, fuel diversity, conservation, women- and minority-owned business opportunity, low-emission vehicle development, and environmental protection programs (*see* LEGISLATION).

The Commission has countered by scheduling an expanded series of "public participation" hearings in San Jose on September 20, Fresno on September 26, Pasadena on September 27, Bakersfield on November 1, Ventura on November 2, Garden Grove on November 2, Carson on November 3, San Bernardino on November 9, and Huntington Park on November 19. Thus far, the agenda for these extensive proceedings does not appear to involve consideration of a proposed "order" or "rule" or any other vehicle capable of legal effect. It appears that the arrangement of such an order requires coordination with the legislature—where numerous existing statutory provisions are implicated—and with the federal government. No action is expected until early 1995, but the PUC plan's concept remains quite alive.

Performance-Based Ratesetting Extended by Commission for SDG&E. On August 3, the PUC adopted a rate decision proposed by Administrative Law Judge Mark Wetzell. The adoption is particularly significant as a precedential exercise of the Commission's new "performance-based ratesetting" approach. *[14:2&3 CRLR 216]* As noted above, PBR establishes a target market price and then allows the utility to keep a portion of the savings if its costs decline, or requires it to accept less if its costs are higher; in both cases, the difference is shared between the stockholders owning the utility and ratepayers. The concept is to replicate the natural marketplace, which rewards efficiency gain and punishes inefficiency.

SDG&E, a strong supporter of PBR, had previously won a two-year pilot project to set performance-based rates in 1993; the current proceeding sought to refine and extend the rates until 1999. It should be noted that the electric power generation deregulation proposal discussed above is independent of performance-based ratesetting; it would be just as feasible (and, consumer advocates argue, more judicious) to maintain traditional fair rate of return maximum rate regulation to the monopoly power distribution system. But the Commission has joined the two concepts politically, and the adoption of the alternative and allegedly more market-like new ratesetting system constitutes another step in the PUC's new policy direction.

UCAN, the major proponent of consumers at the rate hearing to extend SDG&E's PBR pilot project, argued that SDG&E had rigged the target and indicators to assure excessive profits for its stockholders. UCAN contended that substantial efficiency gain would be achieved from the mere increase in usage due to population gain within a high fixed cost plant, and that stockholder enrichment beyond a fair rate of return was being sought from this and other factors unrelated to improved performance. UCAN argued that the utility had already received a $57.4 million rate increase in the first PBR proceeding in 1993, and that the pending SDG&E rate request would add 4–5% per

year until 1999, accomplishing a largely unjustified $250 million in additional profits to the utility.

ALJ Wetzell's proposed decision was announced on July 1, and was agreed to by the U.S. Navy (SDG&E's utility's largest customer) and by the PUC's Division of Ratepayer Advocates. Notwithstanding vigorous legal and public dissent by UCAN, it was adopted without significant alteration by the full Commission on August 3. The final decision allows earnings greater than 1% above SDG&E's authorized rate of return to be shared equally between shareholders and ratepayers. Earnings greater than 3% above the authorized rate of return will trigger PUC rate review. If earnings fall up to 3% below the authorized rate of return, the shareholders absorb the deficiency; a return lower than that level would trigger a rate review for possible rate increases. Under traditional rate of return analysis, a monopoly must also bear deficiencies below authorized rates of return (and may seek rate increases), but—unlike the performance-based alternative—if there is profit beyond the authorized level, the utility does not keep it; rates are reexamined and lowered to benefit ratepayers. Utilities are rewarded for improved performance by conferring rate of return increases, and by allowing them to retain efficiency-generated increases during the year earned.

Joined by TURN, UCAN condemned the decision as a windfall for the utility and an abdication of the Commission's responsibility to ratepayers who are subject to monopoly power. UCAN's Michael Shames argued that energy bills could increase well over the $5 increase anticipated in each monthly bill by 1998; he argued that the approved rates will allow SDG&E to raise rates by as much as $312 million and boost profits by 25%, and without necessarily achieving any efficiencies from its own devices. The utility applauded the decision, describing it as the most comprehensive experiment in the nation in performance-based ratemaking. SDG&E's Tom Page contended that the utility could achieve $19 million more, or $21 million less, than its target rate of return and that the outcome would depend upon its cost control success and performance in employee safety, customer satisfaction, system reliability, and rate comparison.

Biennial Resource Plan Update: Bid Awards Announced. On June 22, the PUC announced that the state's independent power industry would be allowed to supply electricity to California consumers. The Biennial Resource Plan Update (BRPU) was first proposed in 1986 as a means of adding alternative energy to the utility power grid. The allowance of cogeneration from sources outside the utility is not new, but has ebbed and flowed as varying oil and nuclear costs, and litigation by the utilities, has affected its viability. The BRPU was designed to examine whether independent companies using new technology could compete with California's private utility power generation.

The Commission announced winning bids from private independent power producers, including wind, geothermal, hydro, biomass and waste (landfill gas) sources. The average winning bid amounted to 33% less than utility alternatives. Advocates for alternative and renewable energy argue that renewable energy may be more competitive than is widely believed, and the bids suggest that substantial benefits can accrue from competitive opportunities. Interestingly, the winner of the largest contract was a joint venture between PG&E and the Bechtel Corporation (U.S. Generating Company) which will build a gas-fired power plant to sell 712 megawatts (MW) of power. Supporters of the BRPU process, including TURN and the California Manufacturers Association, noted that the PUC's acceptance of independently provided power will add 500 MW of renewable energy capacity and will save ratepayers $260 million annually.

Prior to the June 22 announcement, those promoting independent power production and alternative energy sources had complained bitterly that the Commission had abandoned the BRPU experiment. The award turned bitter commentary in the affected trade press to effusive congratulatory prose for the PUC. The results appear to provide substantial support for at least the electric deregulation concept advanced by the Commission.

PUC Authorizes IntraLATA Competition, Higher Basic Rates. On July 20, the PUC issued for public comment a new proposed decision which raises the basic monthly rate for telephone service from $8.35 to $11.25 for Pacific Bell customers, and from $9.75 to $17.25 for GTE California customers; decreases interLATA (local toll calls of between 16 and 70 miles within each of the state's eleven local phone service areas) rates by as much as 40%; and allows long distance carriers such as AT&T, MCI, and Sprint to compete with PacBell and GTE in the intraLATA category of service. The PUC issued a similar order in 1993, but rescinded that decision less than three weeks later after it was revealed that a top-level Pacific Bell official helped write and edit the draft decision on the evening before its announcement, and engaged in unreported *ex parte* communications with a decisionmaker in violation of PUC rules of procedure. *[14:1 CRLR 166; 13:4 CRLR 203]*

On September 15, the PUC adopted the proposed decision, which is viewed by many as being most beneficial to businesses and least beneficial to elderly, low-income, and minority customers; according to the PUC's estimates, 50% of monthly residential bills will rise by $0.42 or more. Also, long distance carriers, as well as consumer groups such as TURN, criticized the way in which consumers must access the competing carriers for intraLATA service; to use a phone company other than their basic service carrier for local toll calls, customers will have to dial a special five-digit access code. Critics contend that Pacific Bell will have a built-in advantage over its competitors unless customers can use any carrier without having to dial additional numbers; the PUC is expected to conduct further research into this "equal access" issue in future months. The PUC's decision will take effect on January 1, 1995.

PUC Initiates Proceedings to Streamline Regulations Governing Non-Monopoly Telephone Service Providers. On February 3, the PUC instituted a joint rulemaking and investigative proceeding which would streamline regulations governing many telecommunications service providers in California. The proceedings center around a comprehensive revision of the regulatory requirements for so-called "nondominant" telephone corporations, defined by the PUC as those which do not possess the ability to harm consumers through the exercise of market power. This class of service providers does not include AT&T, the dominant long distance company, monopoly local exchange carriers (LECs) such as Pacific Bell and GTE California, or cellular companies. The gist of the revision would allow nondominant telephone providers (NDTP) to avoid the complex certification and tariff approval process with a registration procedure, which might be as simple as a one-page form to be filed with the Commission. To provide consumer safeguards, each business utilizing the registration process must agree to be bound by the PUC's applicable consumer protection standards, as well as those of other state or local consumer protection agencies. Furthermore, the business must agree to enforcement of these standards in the appropriate jurisdiction, such as the small claims court in the locale of the customer. *[14:2&3 CRLR 216; 14:1 CRLR 168–69]*

On July 13, staff presented the PUC with a report entitled *Consumer Protec-*

tions for Consumers of Non-Dominant Telecommunications Providers: A Staff Report to Commissioners, which contains a comprehensive evaluation of the current consumer protection systems available to consumers of the services of NDTPs subject to the PUC's proposed order. Among other things, the report provides an overview of the current consumer protection system; reviews regulatory models which may be applicable to NDTP issues; proposes a model consumer protection system aimed at addressing the changing conditions of a competitive marketplace; discusses consumer rights and responsibilities; and makes recommendations for an effective consumer protection system. The report indicates that the PUC needs to ensure that the following elements are made available to all NDTP consumers:

- Consumers must have accurate and understandable information necessary to make informed decisions about telecommunications services.
- Consumers contacting the Commission must receive a timely and knowledgeable response that outlines their options.
- Consumers' informal complaints must receive an initial investigative response from the PUC; Commission resources must be adequate to conduct further investigations when warranted.
- Consumers must have a progressive range of complaint resolution options, including alternative dispute resolution procedures.
- Consumers must be encouraged to participate in PUC proceedings and provided the support necessary to do so.
- Commissioners and relevant staff must be aware of consumer concerns, problems, and opinions.

Acknowledging that such wide-sweeping reform is not within its authority under existing law, the Commission sought amendments to the Public Utilities Code which would authorize it to waive the certification and tariffing requirements for registration of nondominant telephone corporations. AB 3767 (Andal) would have permitted the Commission to apply "registration only" regulation to telephone corporations without monopoly or significant market power; however, this bill died in committee (*see* LEGISLATION). Because of the bill's failure, the Commission may consider implementing alternative legal procedures in the interim.

PUC Files Petition to Avoid Federal Preemption of Cellular Regulation. On December 17, 1993, the PUC opened an investigation of the mobile telephone service industry to develop a comprehensive regulatory framework designed to promote an orderly transition into a fully competitive marketplace while assuring that consumers are protected against unjust or unreasonable rates. *[13:4 CRLR 205]* On August 3, the PUC issued an interim opinion in which it considered the threshold question of whether current market conditions for mobile telephone services protect subscribers adequately from unjust, unreasonable, or discriminatory rates, and consequently, whether continued state regulation of carriers is necessary to protect consumers. In its opinion, the PUC concluded that the wholesale cellular telephone market currently remains uncompetitive, and that, "[a]ccordingly, state regulation of cellular carriers should continue at least for the near term to protect consumers against unreasonable rates while fostering the development of a competitive mobile telecommunications market."

In its opinion, the PUC explained that significant change in federal regulation of mobile service providers was initiated with the passage of the federal Omnibus Budget Reconciliation Act of 1993, which amends section 332 of the Federal Communications Act of 1934 to create a new regulatory framework governing "commercial mobile radio service." On March 7, the Federal Communications Commission (FCC) issued its "Second Report and Order" addressing the implementation of the 1993 Budget Act; as stated in the FCC order, the intent of the Budget Act was to replace traditional regulation of mobile services with a comprehensive, consistent framework. The Budget Act also preempts state and local rate and entry regulation of all commercial mobile radio services effective August 10, 1994; however, any state with rate regulation in effect on June 1, 1993, may petition the FCC by August 10, 1994, to extend that authority based on a showing that industry market conditions fail to protect subscribers from unjust rates, or that such service is substantially a replacement for landline exchange service.

Accordingly, the PUC solicited evidence in its investigation on the degree of competition currently existing in urban, suburban, and rural California markets for commercial mobile services; whether, in each market, competitive conditions protect subscribers adequately from unjust and unreasonable rates, or rates that are unjustly discriminatory for commercial mobile services; and where such market conditions exist, whether commercial mobile service is a replacement for landline telephone exchange service for a substantial portion of the telephone landline exchange service within California markets. Based upon the results of its investigation, the PUC concluded that "the cellular sector of the mobile services market continues to be uncompetitive which has perpetuated unreasonably high rates." Accordingly, the PUC decided to exercise its option under federal law to file a petition to retain regulatory authority over cellular carriers for an interim period of eighteen months after September 1, 1994. In its opinion, the PUC added that it is the Commission's "expectation that the industry would have come under effective competitive discipline by the end of this period." However, at present, most markets have—at most—two competitors. Large cellular carriers enjoying dispensation from both rate regulation and competition have aggressively sought federally granted insulation from state or local regulation, similar to the privileges exercised by the cable television industry. *[9:4 CRLR 9]*

PUC's Allocation of Pacific Telesis Spin-Off Refund Under Challenge. In January 1994, ALJ Greggory Wheatland asked for written comments from interested parties on the proposed disposition of the $49 million fund established to compensate ratepayers for the spin-off of Pacific Telesis' wireless operations. Telesis was required to establish the fund as one condition of the PUC's approval of the spin-off, to compensate ratepayers for research and development costs of wireless and cellular systems financed through phone rates between 1974 and 1983. In its spin-off decision, the PUC identified several alternative methods of allocating the funds, including the funding of advanced telecommunications for schools and libraries or for rural or economically underdeveloped areas; reinstating the Telecommunications Education Trust (TET) to fund programs to inform the public about telecommunications services and programs; funding outreach to inform qualified consumers about low-cost phone service through the Universal Lifeline program; and flowing the refund through to ratepayers in the form of reduced phone rates. *[14:2&3 CRLR 217; 14:1 CRLR 167; 13:4 CRLR 204]*

On August 8, the PUC announced that $7.9 million of the now $50 million fund will be refunded directly to Pacific Bell ratepayers on a pro rata basis through a surcredit on monthly bills; $40 million will be used for telecommunications programs and facilities in public schools statewide; and $2.1 million will be used to continue the TET. According to Commissioner P. Gregory Conlon, funding telecommunications infrastructure for schools is appropriate because it is an effective way to stimulate the development of an

advanced telecommunications infrastructure for California, and benefits California's telecommunications users. In conjunction with its decision, the PUC extended the term of the TET program until December 31, 1996.

PUC Commissioners Patricia Eckert and Norman Shumway opposed this allocation of the $50 million fund; in her dissent, Eckert opined that "the $50.3 million must all be refunded to Pacific Bell's ratepayers under California law." According to Eckert, "refunding all of the monies to Pacific Bell's current ratepayers is the option most clearly supported by California law and Commission practices." Among other things, Eckert expressed concern that the allocation to the schools has the attributes of a tax, which the Commission has no authority to impose; Eckert was also critical of the plan's redistribution of money from one service territory to another franchise territory, stating that Pacific Bell's former ratepayers will presumably end up funding schools statewide, including those in GTE California's and the other local exchange companies' territory.

TURN and the legislature, through Assembly Speaker Willie Brown, have both filed petitions for rehearing with the Commission which are pending at this writing. If denied, as anticipated, both may be expected to petition for California Supreme Court for review. In the filed briefs seeking rehearing, TURN argues that any assessed funds should be returned to ratepayers. The legislature argues that any funds not returned to ratepayers must be deposited in the general fund. The challenge here presented will turn on the authority of the PUC to give restitution to ratepayers directly—that is, through what are called *cy pres* grants. Substantial authority supports such an equitable option for courts (*State of California v. Levi Strauss & Co.*, 41 Cal. 3d 460 (1986)), particularly where direct restitution to all victims is impractical and one of the goals of restitution is disgorgement of the defendant's "unjust enrichment." There is also authority that the PUC exercises all of the equitable powers of a court in its adjudicatory capacity (*Consumers Lobby Against Monopolies v. PUC*, 25 Cal. 3d 891 (1979)). The Commission is also likely to cite the powers delegated to it in Article XII, sections 2, 5, and 6 of the State Constitution, and sections 701, 734–36 of the Public Utilities Code, which give the Commission broad authority, including authority over "reparation" collection and awards.

PUC Overturns ALJ's Discovery Order. On April 1, PUC ALJ Robert L. Ramsey ordered the California Cable Television Association (CCTA) to comply with discovery requests filed by Pacific Bell, which would require CCTA to disclose member information concerning deployment of fiber optic cable and intentions to provide telecommunications services which would compete directly with local exchange carriers such as Pacific Bell. CCTA, a professional association comprised of over 350 California cable system operators, opposed the discovery requests on the grounds that the information is irrelevant to the underlying proceeding, is privileged, and consists of materials which the association does not maintain and cannot legally be compelled to gather from its membership. CCTA appealed the decision to the full Commission. *[14:2&3 CRLR 217]*

On June 24, ALJ John S. Wong stayed ALJ Ramsey's April 1 ruling until the Commission could address the merits of CCTA's appeal. According to Wong, the discovery dispute in this proceeding "involves the extent to which a trade association's membership is subject to discovery when only the trade association is a party to a Commission proceeding." Noting the "potential impact of this issue in other Commission proceedings," Wong opined that "this is an issue that should be resolved by the Commission in advance of any decision on the merits of the petition for modification...."

On August 3, the PUC issued its decision resolving CCTA's appeal; initially, the PUC noted that its decision is a "rare occurrence" in that the Commission is normally reluctant to review evidentiary and procedural rulings before the proceeding has been submitted. However, the PUC decided to review the appeal in this proceeding because of the possible ramifications the ruling could have in other proceedings where an association is a party.

In determining whether—in the context of a discovery order—it may compel an association to provide answers from its members, the PUC noted that Public Utilities Code section 1794 provides that "[t]he Commission or any Commissioner or any party may, in any investigation or hearing before the Commission, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this state and to that end may compel the attendance of witnesses and the production of books, waybills, documents, papers, and accounts." The PUC then noted that the discovery procedures available in civil courts depend on the relationship or status of the person from whom discovery is sought; for a party to a proceeding, a wide range of discovery procedures are available (*e.g.*, interrogatories, requests for admission, document production), while discovery of one who is not a party to the action is somewhat more limited (*e.g.*, depositions with or without a subpoena duces tecum).

Pacific Bell and GTEC argued that CCTA's participation in this proceeding is analogous to a class action suit, in which members of the represented class are subject to discovery. However, the PUC concluded that class actions are distinguishable from an association's participation in proceedings before it, stating that "[t]he most distinguishing factor is that in a class action, the class suit is brought so that the class representative and the class members can obtain a share of the damages, or of a common fund...." However, in a PUC proceeding, "an association and its members are not awarded any damages. Instead, associations participate in Commission proceedings because the rules or regulations at issue in a proceeding may impact the financial relationship between the utility and the association's members." The PUC concluded that members of an association should not automatically be subject to discovery as a party merely because they are members of an association. This judgment rejects Pacific Bell's argument, notwithstanding substantial precedential support, that an association is not a separate entity but a joint activity of its membership taken in concert, existing only to serve individual interests, and warranting heightened scrutiny (not privacy dispensation) because of the power of a combination.

The PUC noted that ALJ Ramsey's ruling requires "each member of CCTA" to provide answers to certain discovery requests, and "conclude[d] that the Commission cannot compel an association to require its individual members to answer data requests." According to the PUC, one of the principal purposes of discovery is to enable the discovering party to obtain evidence from one's adversary who has control of the information in question, and "[i]f information is being sought from individual members, it is unlikely that the association possesses or has control over that sort of information." However, the PUC also held that to the extent that ALJ Ramsey's ruling requires responses by CCTA itself, the Commission will require CCTA to provide answers to those requests. Consumer advocates are critical of this ruling, contending that it encourages powerful associations to act as buffers, impeding information disclosure for informed decisions.

The PUC also addressed CCTA's contention that the information sought by one of the requested items seeks information protected by the attorney-client privilege because it is seeking communications between CCTA members and its attorneys concerning their individual positions on CCTA's intervention in the instant case. The PUC noted that the request in question seeks the identity of those CCTA members who have authorized or refrained from authorizing CCTA from acting in this proceeding. According to the PUC, this request "merely seeks to identify the clients on whose behalf CCTA is acting, a matter which is not privileged as was noted in ALJ Ramsey's ruling." The PUC concluded that "[t]he disclosure of who CCTA is acting on behalf of will not result in the disclosure of any of those member's communications" and "does not impinge on any communication made in confidence in connection with the attorney-client privilege."

FCC Promulgates Rules for Interstate Caller ID. On April 18, the FCC established regulations for interstate Caller ID; the rules are scheduled to become effective on April 12, 1995, and will preempt state law only with regard to calls made between states. Because the federal standards are less restrictive than current California Caller ID regulations, the PUC is faced with the prospect of either forcing the telephone service providers to develop two sets of standards or modifying its regulations to conform to the federal model. *[14:2&3 CRLR 218]*

The new regulations, which will appear as 47 C.F.R. Part 64.1600–64.1604, provide that any common carrier using the SS7 switching technology must transmit the calling party's number with all interstate calls (SS7 is the technology that makes Caller ID service possible). The rules further provide that all common carriers must provide a free per-call blocking option for all such calls. There is no provision for per-line blocking. All common carriers must use the code *67, dialed as the first three digits of the call, as the per-call blocking code (described by the FCC as the caller's "request for privacy"). The receiving carrier must, with specified exceptions, ensure that calls blocked in this fashion are not disclosed. No common carrier may charge any customer for the call-blocking service. Finally, any common carrier using SS7 technology must notify all customers that their phone numbers may be identified to a called party, and inform customers how to maintain privacy by using the *67 function.

The FCC rules differ from those developed by the PUC in 1992 *[13:1 CRLR 135]* in that the PUC ordered telephone companies to offer three free blocking options: per-call blocking, per-line blocking, and per-line blocking with per-call enabling. Per-line blocking is viewed as essential for customers with unlisted phone numbers who wish to keep their numbers private. However, the FCC declined to require a per-line blocking option because of a concern that, in emergencies, a caller would forget to disable the blocking and prevent emergency response teams from quickly identifying the caller. The PUC also requires companies to establish an extensive customer notification and education program. To date, no major telephone corporation in California has elected to provide Caller ID service.

During the summer, over fifty petitions for reconsideration were filed with the FCC from state attorneys general, associations, public interest groups, and carriers. Additionally, the PUC petitioned the U.S. Ninth Circuit Court of Appeals to overturn the FCC's rulemaking order, on the basis that it was reached in a manner that violates the procedural requirements prescribed by the federal Administrative Procedure Act; however, the PUC later requested that the court delay action on its petition pending the outcome of the reconsideration petitions. At this writing, the FCC has taken no official action in response to the petitions; the PUC is expected to pursue its court action if the reconsideration petitions are not resolved to its satisfaction.

Pacific Telesis Strikes Alliance with Key Minority and Consumer Group. On July 14, Pacific Telesis and Pacific Bell signed an agreement with the Greenlining Coalition, which was formed to protect minorities from "redlining" practices of banks, insurance companies, and other businesses; under the agreement, the two groups will work together to bring telephone service to more Californians. Specifically, Pacific Bell will consider implementing a multilingual marketing plan for Universal Lifeline Telephone Service; developing and marketing products and services that will enable customers to better control their phone bills; and offering a "warm" or "quick" dial tone service, so that even if phone service has not been ordered, a "warm" or "quick" dial tone would allow an occupant to plug in his/her phone to call Pacific Bell's business office to make phone service arrangements or to call 911 in emergencies.

New Federal Law Interrupts PUC Review of General Freight Transportation Regulation. On August 23, President Clinton signed H.R. 2739 (Oberstar), federal legislation which generally preempts state regulation of the price, route, or service of motor carriers transporting property and air carriers transporting property by motor vehicle. Generally, the federal law, known as Public Law No. 103-305, deregulates the transportation of general freight; cement; livestock; rock, sand, and gravel (by dump truck); motor vehicles in secondary truckaway movement; trailer coaches, campers, and recreational vehicles; agricultural products; commodities carried in tank trucks and vacuum tank trucks; and transportation currently exempt from California rate regulations. The law also applies to private carriers and integrated intermodal small package (IISP) carriers.

However, the new law, which takes effect on January 1, 1995, does not affect the states' authority to license and regulate the safety and financial responsibility of these carriers, nor does it preempt the states from regulating any aspect of the transportation of household goods. Accordingly, a state may still impose highway route controls, limitations based on the size and weight of the motor vehicle, controls on hazardous cargo, minimum insurance requirements, and self-insurance authorization. Also, states may continue to regulate uniform cargo liability rules, uniform bills of lading or receipts for property being transported, uniform cargo credit rules, antitrust immunity for joint line rates or routs, and classifications and mileage guides, provided that the states' laws, regulations, or provisions are no more burdensome than compliance with the federal statutory provisions or regulations adopted by the Interstate Commerce Commission under the statutory provisions.

The "deregulation-regulation" struggle over trucking does not involve direct health and safety regulation, where both federal and state regulators have had and retain substantial authority. The dispute pertains to pricing: Carriers contend that they should be licensed narrowly by type of carriage and area, and competitors barred unless current carriers are unable to carry the volume offered; that they should be allowed to meet together by type of carrier and region and collectively and privately propose rates (rate bureaus); and that the PUC should review those rates for fairness and enforce them as minimum rates. The carriers have argued since the 1930s that these restrictions and minimum rates are needed to prevent "destructive competition," predatory pricing, inadequate investment in safety, excessive driving hours, and lack of stable carriage for shippers. Consumer advocates, market conservatives, and economists combined

to condemn the restrictions and minimum prices as horizontal price fixing in an industry particularly amenable to competition. Substantial studies conducted over the past twenty years have generally favored the latter position, documenting substantial waste (empty backhauls), excessive prices, inefficiency, and little correlation between rates and safety or other social benefits; much of this evidence has been presented to the Commission over the past decade. *[11:3 CRLR 192; 10:4 CRLR 180–81; 6:1 CRLR 7]*

The PUC replicated the much-criticized federal system of trucking regulation until the 1970s when deregulation policies began to take hold nationally. The PUC then followed the federal lead in deregulation until 1980. It then curiously began an eight-year period of "re-regulation," permitting most of the practices rejected federally, with then-Commissioner Gravelle strongly dissenting. Since 1988, the PUC has once again considered a shift back toward deregulation, but economists and consumer advocates contend that it retains significant anticompetitive features.

The PUC has separated out different classes of carriers throughout its history for disparate regulatory treatment—common carriers (those who hold themselves out generally for carriage) and contract carriers (those who haul for a particular shipper or shipper group). Common carriers are subject to greater regulation. The PUC has separated out common carriers traditionally by type, *e.g.*, household goods, livestock, logging, dump trucks, cement haulers, petroleum, and "general freight." General freight, as the largest category, no longer has the once intrusive limitations on type of truck, commodities allowed to be carried, entry, and prices which may not be varied. However, the system in place allows rate bureaus to continue, and rates must be filed before they can be charged, with at least ten days' advance notice allowed. The PUC has reduced its role as the enforcer of minimum rates, but economists and consumer advocates argue that where the PUC allows collusion and requires advance notice of any rate decrease, it creates what they call "an advance detection mechanism" for those in a combination to enforce its terms. The result is likely to be the same. The PUC has allegedly turned from the enforcer of private rate-fixing to a passive but tolerant facilitator. Meanwhile, other critics contend that the tariffs have become so complex that experts must be hired to interpret them.

Complicating matters further, the PUC created a new class of general freight common carrier, effective January 1, 1994—the IISP Carrier. *[14:2&3 CRLR 218; 13:4 CRLR 210–11]* IISP carriers are those carrying small packages (under 150 pounds) who also have an intermodal (air/ground) transport capacity, such as Federal Express. This class is exempt from price regulation in the true sense, as intended from federal trucking deregulation. There are no rate bureaus, antitrust law fully applies, rates need not be filed prior to charge, and there are no minimum rates (except for the unfair and predatory competition standards applicable to all). Knowing that almost half of general freight truck carriage involves small packages, the carriers without airplane capacity complained that they were being undercut in price. They had to file and wait ten days to meet a lower price which a IISP carrier could quote over the phone. Accordingly, AB 2015 (Moore) (Chapter 1226, Statutes of 1993) required the PUC to examine the impact of the new truly deregulated class of carrier on those subject to remaining regulation. In I.94-03-036, the Commission started such an inquiry. Now, because of the federal legislation, the PUC proceeding is in doubt; currently, the PUC is examining the new federal law to determine its effect on PUC regulations and whether this rulemaking proceeding is necessary.

If the federal statute operates to end "rate bureaus," voluntary collusion, and required tariff filing, it will mean substantial change for most categories of California trucking, and the devolution of all trucking to the open status of the new IISP carrier. Such a required devolution is clearly what the federal legislation intends and appears to require. The one exception in the federal law for household goods carriers is significant: California retains substantial anticompetitive regulation of household goods carriage, including high minimum rates based on $40 to $50 per hour wages to loaders and drivers.

Rules on Disqualification of ALJs. On August 3, the PUC adopted Rule 63.1 *et seq.*, Article 16, Title 20 of the CCR, which sets forth procedures governing the disqualification of its ALJs for bias or prejudice. *[14:2&3 CRLR 218]* The rules set forth the grounds which qualify for ALJ disqualification, grounds which do not qualify for disqualification, and the procedures for disqualifying an ALJ, which may be accomplished by the ALJ or upon the motion of any party.

During the 45-day public comment period, comments were submitted by TURN and PG&E; according to the PUC, these comments largely restated arguments regarding an ALJ's knowledge of disputed facts, peremptory challenges, and the *ex parte* rule which were previously considered in the revised rules. Although TURN favored a rule that would disqualify an ALJ if he/she has personal knowledge, acquired in a capacity other than that of an ALJ, of disputed evidentiary facts concerning the proceeding, the PUC rejected this recommendation because it would disqualify an ALJ if he/she acquired knowledge of the disputed facts as a former member of the PUC staff. Many staff members are promoted to ALJ after acquiring technical knowledge of many issues and, therefore, many ALJs would have some knowledge of the disputed facts.

Various groups favored affording parties a peremptory challenge which would allow for automatic disqualification of a judge on the filing of an affidavit alleging a good faith belief that a judge is biased or prejudiced—analogous to common court procedure. The proposed rules initially did not include peremptory challenges and PG&E was one of five parties supporting the inclusion of such a procedure; PG&E suggested that peremptory challenges at least be adopted for complaint cases and preferably for "quasi-legislative" proceedings as well.

The PUC agreed to allow such a challenge in adjudicatory "complaint" proceedings.

The rules also include a ban on *ex parte* communications regarding the assignment, reassignment, or disqualification of a particular ALJ; PG&E did not favor this ban, contending that *ex parte* communications regarding disqualification should be subject to the Commission's existing rules. However, the PUC prudently decided that it is important to prohibit *ex parte* communications on the subject of who is to hear or decide a case in order to maintain the integrity of the decisionmaking process, and will apply the prohibition accordingly.

LEGISLATION

ACR 143 (Sher), as amended August 27, 1994, expresses concern that the Commission has not developed a sufficient factual record in its proceeding to deregulate the electric services industry (*see* MAJOR PROJECTS), and urges the PUC to issue no interim, final, or effective order until it has held evidentiary hearings and made specified reports to the legislature and the Governor. These reports include the following:

–proposed policies regarding performance-based ratemaking and electric industry restructuring proceedings, including a definition of the base revenue requirements providing the starting point for

measuring utility performance and achieving rate reductions, and policies providing customer choice and fair generation competition;

–a report on how those policies, including policies affecting direct access and reciprocity of service opportunity in other states and countries, conflict with state or federal law, and suggestions on how to resolve those conflicts;

–a quantification, following evidentiary hearings, on the competition transition surcharges for each utility and the allocation of those charges among shareholders, classes of ratepayers, and direct access and utility service customers;

–an identification and quantification of options, both through rates and through alternative funding arrangements, to pay for low-income ratepayer assistance, economic development, fuel diversity and renewable resource development, demand-side management, environmental protection, low-emission vehicle development, and women- and minority-owned business programs; and

–a report on how those policies and programs affect existing investment in nonutility electric power generation and the climate for new investment in that generation.

ACR 143 further establishes the Joint Oversight Committee on Lowering the Cost of Electric Services, consisting of at least three and not more than five members appointment by the Assembly Speaker, and at least three and not more than five members of appointed by the Senate Rules Committee, to ensure that the proposals made by the PUC meet the criteria outlined in ACR 143; ensure that the legislature is properly consulted and involved in policies proposed by the Commission to deregulate the electric services industry; and provide a mechanism for the legislature to work with the Governor, the Commission, the California Energy Commission, and other parties on the most effective strategy for achieving lower utility rates, fair competition, improved environmental protection, and resource diversity.

SB 1630 (Hart), as amended June 21, requires local telephone corporations in the state, excluding wireless or cellular corporations, to provide, to the extent permitted by existing technology or facilities, all existing and newly installed telephone connections to residential households with access to "911" emergency service regardless of whether an account has been established, and prohibits telephone corporations from terminating access to these services for nonpayment of any delinquent account or indebtedness owed by the subscriber to the telephone corporation. This bill was signed by the Governor on September 15 (Chapter 612, Statutes of 1994).

SB 1709 (Peace). Existing law provides that whenever a public utility and a cable television corporation or association of cable television corporations are unable to agree upon the terms, conditions, or annual compensation for pole attachments or the terms, conditions, or costs of rearrangements, the PUC shall establish and enforce the rates, terms, and conditions for pole attachments and rearrangements so as to assure a public utility the recovery of specified funds. As amended July 5, this bill states the intent of the legislature that public utilities and publicly owned utilities be fairly and adequately compensated for the use of their rights-of-way and easements for the installation of fiber optic cable, and that electric public utilities and publicly owned utilities have the ability, if they so desire, to negotiate access to those fiber optic cables, for their own use, and makes findings and declarations in that regard. This bill was signed by the Governor on September 17 (Chapter 623, Statutes of 1994).

AB 3610 (Moore). Existing law requires the PUC to design and implement programs whereby each telephone corporation shall provide a telecommunications device capable of servicing the needs of individuals who are deaf or hearing impaired, and to establish a rate recovery mechanism through a surcharge to be in effect until January 1, 1995. As introduced February 25, this bill extends that surcharge until January 1, 1997. This bill was signed by the Governor on September 15 (Chapter 608, Statutes of 1994).

AB 727 (Moore). Existing law requires the PUC, in granting an operating permit or a certificate to a charter-party carrier, to require the carrier to maintain adequate liability insurance. As amended April 14, this bill prohibits any agency or local government from requiring any person, firm, or corporation holding a valid permit as a charter-party carrier to provide insurance in a manner different from that required by the Commission.

This bill prohibits the governing body of an airport from imposing a fee based on gross receipts of charter-party carriers operating limousines. This bill prohibits a charter-party carrier from operating a limousine, as defined, unless the limousine is equipped with special license plates issued and distributed by the Department of Motor Vehicles (DMV), and requires the PUC to issue a permit or certificate for limousine service. This bill requires a charter-party carrier operating a limousine to state the number of its permit or license plate in every written or oral advertisement. These provisions become operative on July 1, 1995.

Existing law makes it unlawful for the owner of a charter-party carrier of passenger motor vehicles employing or otherwise directing the driver of the vehicle to permit operation of the vehicle upon a public highway for compensation without first complying with vehicle identification requirements under a specified provision of law. This bill, in addition, makes it unlawful to permit the operation of any such vehicle without having complied with specified provisions requiring the display of a decal or special license plates. This provision will become operative on July 1, 1995.

This bill requires every limousine operated by a charter-party carrier to display a special identification license plate issued by the DMV. This provision will become operative on July 1, 1995.

This bill requires the PUC to fund the costs of administering the special identification license plate program required by this bill, including the costs of the DMV, from the Public Utilities Commission Transportation Reimbursement Account.

This bill requires the DMV and the PUC to adopt a memorandum of understanding by January 1, 1995, governing the exchange of information on vehicle registrations and reimbursement by the Commission of the DMV's costs in producing and distributing special identification license plates for limousines as required by this bill. This bill was signed by the Governor on June 24 (Chapter 109, Statutes of 1994).

The following is a status update on bills reported in detail in CRLR Vol. 14, Nos. 2 & 3 (Spring/Summer 1994) at pages 219–22:

AB 2840 (Solis). Existing law states that the PUC's meetings shall be open and public and sets forth certain requirements in that regard. As amended August 26, this bill would have additionally required the PUC to schedule public participation meetings for hearing public opinion on various public utilities' rates or services. This bill was vetoed by Governor Wilson on September 27; according to Wilson, "this bill proposes to micromanage the operations of the [PUC] by mandating the method it must use to elicit the concerns of utility ratepayers. The bill's requirement that the Commission conduct as many as 20 meetings around the State each year, in addition to its other public meetings, constitutes overreaching."

AB 2850 (Escutia). Existing law requires the PUC, upon scheduling hearings and specifying the scope of issues to be

heard in any proceeding involving an electrical, gas, telephone, railroad, or water corporation, or a highway carrier, to assign an ALJ to preside over the hearings, either sitting alone or assisting the Commissioner or Commissioners who will hear the case. Existing law permits the PUC, in issuing its decision, to adopt, modify, or set aside the proposed decision of the ALJ or any part of that decision. Every finding, opinion, and order made in the proposed decision and approved or confirmed by the Commission shall, upon that approval or confirmation, be the finding, opinion, and order of the Commission. As amended August 22, this bill requires, with a specified exception, beginning January 1, 1995, any item appearing on the PUC's public agenda as an alternate item, as defined, to an ALJ's proposed decision to be served upon all parties to the proceeding and be subject to public review and comment before it may be voted upon. The bill also requires that, prior to commencement of any meeting at which Commissioners vote on items on the public agenda, the PUC make available to the public copies of the agenda and, upon request, any agenda item documents that are proposed to be considered at a Commission meeting. This bill was signed by the Governor on September 28 (Chapter 1110, Statutes of 1994).

SB 1957 (Rosenthal). Existing law states that the PUC's meetings shall be open and public in accordance with the Bagley-Keene Open Meeting Act; with respect to the PUC, that Act provides that the requirement that the public be provided an opportunity to address the Commission on each agenda item does not apply to agenda items that involve decisions of the Commission regarding adjudicatory hearings. As amended June 27, this bill would have deleted that exemption, prohibited serial, rotating, or seriatim meetings, and defined the term "meeting." This bill also would have prohibited certain *ex parte* communications regarding proceedings conducted by the Commission; required that, prior to commencement of any meeting at which Commissioners vote on items on the public agenda, the PUC make available to the public copies of the agenda and any other writings distributed to all or a majority of the Commissioners for discussion or consideration at the meeting; and prohibited the PUC from voting on certain alternate public agenda items to proposed decisions of ALJs until those items and a summary of the substantive changes proposed in the proposed decision of the ALJ by those items, have been made available to the public.

Provisions from three other bills—SB 1956 (Rosenthal) (subjecting any non-social gathering of a quorum of PUC members to the requirements of the Bagley-Keene Open Meeting Law), AB 2840 (Solis) (requiring the PUC to schedule public participation hearings in the service territory of every utility under its jurisdiction), and AB 2850 (Escutia) (requiring various documents related to public hearings to be furnished to the public before the meeting or voting)—were amended into this bill late in the legislative session. This bill was vetoed by Governor Wilson on July 20; according to Wilson, "[t]his measure is poorly conceived, and superficially addresses the serious procedural reform issues confronting the Commission, and unnecessarily burdens the decision-making process with unworkable mandates while ignoring the far-reaching procedural and structural reform recommendations made by the Advisory Working Group" chaired by former PUC President Don Vial. *[14:2&3 CRLR 3, 214]*

AB 3720 (Costa), SB 1966 (Calderon), and **AB 3606 (Moore)** implement some of the Commission's recommendations made in *Enhancing California's Competitive Strength: A Strategy for Telecommunications Infrastructure*, the PUC's December 1993 report to the Governor in which it proposed sweeping changes in the state regulatory structure of the telecommunications industry, including a call for open competition in all telecommunications markets by January 1, 1997. *[14:1 CRLR 168–69]*

• ***AB 3720 (Costa)***, as amended July 7, requires the PUC to require competitive intrastate interexchange telecommunications service, subject to specified conditions. The bill also requires the PUC to pursue all reasonable and necessary legislative and judicial actions to open California's intrastate interexchange markets to full competition. These provisions will be known as the California Long Distance Telecommunications Consumer Choice Act. This bill was signed by the Governor on September 27 (Chapter 934, Statutes of 1994).

• ***SB 1966 (Calderon)***. The Public Utilities Act sets forth the findings and declarations of the legislature that a policy for telecommunications in California is, among other things, to promote economic growth, job creation, and the substantial social benefits that will result from the rapid implementation of advanced information and communications technologies by assuring adequate long-term investment in the necessary infrastructure. As amended August 11, this bill instead refers to the rapid implementation of these technologies by adequate long-term investment in the necessary infrastructure. The bill also declares that it is a policy of the state to remove the barriers to open and competitive markets and promote fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice. This bill was signed by the Governor on September 30 (Chapter 1284, Statutes of 1994).

• ***AB 3606 (Moore)***, as amended August 17, makes a legislative finding and declaration that a policy for telecommunications in California is to promote lower prices, broader consumer choice, and avoidance of anticompetitive conduct; states the legislature's intent that all telecommunications markets subject to PUC jurisdiction be opened to competition not later than January 1, 1997, and that the PUC take steps to ensure that competition in telecommunications markets is fair and that the state's universal service policy is observed; provides that if any local exchange telephone company obtains the right to offer cable television or video dialtone service within its service territory from a regulatory body or court of competent jurisdiction, any cable television corporation may immediately have the right to enter into the local telecommunications market within the service territory of that local exchange carrier by filing for approval a certificate of public convenience and necessity, if necessary, which shall be expeditiously reviewed by the PUC; and requires the Commission to expedite its open network architecture and network development, interconnection, and other related dockets so that whatever additional rules and regulations that may be necessary to achieve fair local exchange competition shall be in place no later than January 1, 1997. This bill was signed by the Governor on September 30 (Chapter 1260, Statutes of 1994).

SB 1304 (Ayala). Existing law requires electrical corporations to make available to qualifying heavy industrial customers optional interruptible or curtailable service, at a rate to reflect a pricing incentive. As amended May 10, this bill requires the PUC to direct each public utility electrical corporation to renew its efforts to reduce the rates charged heavy industrial customers to a level competitive with other states, and requires each electrical corporation to report to the PUC no later than June 30, 1995, on those measures or practices it has identified that would permit it to reduce its firm service rates for heavy industrial customers to the level of its interruptible or curtailable service rates provided to those customers as

of January 30, 1993. This bill also expresses legislative findings and declarations and state the legislative intent with respect to these provisions. This bill was signed by the Governor on September 22 (Chapter 752, Statutes of 1994).

SB 1456 (Rosenthal), as amended June 23, requires the PUC to authorize public utilities to establish catastrophic event memorandum accounts and to record in those accounts specified costs that would be recoverable in rates following a request by the affected utility, a finding of their reasonableness, and approval by the Commission. The bill also requires the PUC to hold expedited proceedings in response to utility applications to recover costs associated with catastrophic events. This bill was signed by the Governor on September 29 (Chapter 1156, Statutes of 1994).

AB 2837 (Baca), as introduced February 14, would have prohibited the PUC from ordering an electrical or gas corporation to put low-income energy services out for bid, and rescinded any such orders made prior to January 1, 1995. This bill was vetoed by Governor Wilson on July 20; Wilson opined that "[i]t would be wholly inappropriate to enact a statute which limits the ability to protect ratepayers' from non-competitively derived costs."

AB 3704 (Bronshvag). Existing law prescribes the circumstances under which telephone corporations can release information regarding residential subscribers without their consent in writing. As amended April 11, this bill permits release of information relating to Universal Lifeline Telephone Service customers to public utilities for the sole purpose of low-income ratepayer assistance outreach efforts. This bill was signed by the Governor on July 15 (Chapter 214, Statutes of 1994).

AB 3643 (Polanco), as amended May 2, requires the PUC to initiate an investigation and open a proceeding to examine the current and future definitions of universal service in telecommunications; and requires the PUC to report to the legislature by January 1, 1996, on its findings and recommendations. This bill was signed by the Governor on July 20 (Chapter 278, Statutes of 1994).

SB 1939 (Rosenthal), as amended August 25, requires the PUC to extend special programs for up to a three-year period to encourage telecommuting in the area of the state affected by the Northridge earthquake of 1994. The bill requires the PUC to initiate an investigation into the establishment of special telecommunications programs to encourage telecommuting in the entire state, and report to the legislature its findings and recommendations by December 1, 1995. This bill was signed by the Governor on September 27 (Chapter 943, Statutes of 1994).

SB 1998 (Kopp), as amended July 2, requires the PUC to investigate the advantages and disadvantages of requiring telephone corporations to bill in increments shorter than one minute and report to the legislature not later than December 31, 1995. This bill was signed by the Governor on September 19 (Chapter 677, Statutes of 1994).

SB 1960 (Rosenthal), as amended August 26, this bill would have, until January 1, 2010, enacted the Rosenthal-Moore Educational Technology Act of 1994, and established the Golden State Education Network Foundation, with specified membership. This bill would have made an appropriation of $40 million from any moneys received by the PUC pursuant to a specified decision of the Commission for purposes of the Rosenthal-Moore Educational Technology Act of 1994. This bill was vetoed by the Governor on September 30.

AB 1879 (Bornstein) and **AB 1879 (Peace)**. Existing law requires the PUC to designate a baseline quantity of electricity and gas, as defined, necessary for a significant portion of the reasonable energy needs of the average residential customer. The Commission is also required to establish a standard limited allowance of gas and electricity to which specified residential customers are entitled in addition to the baseline quantity. As amended August 25, these bills would have included within the category of residential customers to whom the additional limited allowance of electricity applies, until December 31, 1997, customers 62 years of age or older who reside in extreme climatic zones, as defined; prohibited the cost of this limited additional allowance from being borne solely by any single class of customer; and established a different baseline quantity of electricity for those customers. Both bills were vetoed by the Governor on September 24.

AB 3524 (Bowler). Under existing law, the furnishing of specified passenger transportation services by a charter-party carrier of passengers is subject to the PUC's jurisdiction and control. These services are required to be furnished pursuant to a certificate of public convenience and necessity or a permit issued by the Commission, subject to specified filing fees. Existing law limits these permits to service areas with mileage restrictions. As amended June 23, this bill alters these mileage restrictions for designated permits, and revises the amount of filing fees for a specified classification.

Existing law sets forth the requirements to be met before a permit or certificate may be issued for charter-party carriers of passengers. This bill makes these provisions applicable to the issuance or renewal of permits, and sets forth certain requirements to be met before a certificate may be issued or renewed. This bill was signed by the Governor on September 9 (Chapter 456, Statutes of 1994).

AB 3589 (Rainey), as amended August 8, specifically requires the PUC to establish just, reasonable, and nondiscriminatory minimum rates for dump truck carriers and adjust the rates of those carriers to reflect costs that have increased or decreased since the rates were last adjusted; requires the PUC to establish or approve expedited rate deviation procedures for dump truck carriers; and authorizes the PUC to approve applications by dump truck carriers for deviations from those minimum rates. This bill became law without the Governor's signature on October 4 (Chapter 1299, Statutes of 1994).

AB 3332 (Conroy). Existing law provides that when the PUC's executive director determines that any household goods carrier, passenger stage corporation, highway common carrier or cement carrier, or highway carrier, or any officer, director, or agent of any household goods carrier, passenger stage corporation, highway common carrier, or cement carrier, or highway carrier, is failing or omitting or about to fail or omit to do anything required of it by law, or by any order, decision, rule, direction, or requirement of the Commission, or is doing anything or about to do anything, or permitting anything or about to permit anything to be done, in violation of law or of any order, decision, rule, direction, or requirement of the commission, the executive director may make application to the superior court for injunctive relief, a restraining order, or other order, upon a showing by the executive director that a person or corporation has engaged in or is about to engage in these acts or practices. As amended June 28, this bill specifically includes within the type of order that the court may grant an order allowing vehicles used for subsequent operations subject to the order to be impounded at the carrier's expense and subject to release only by subsequent court order following a petition to the court by the defendant or owner of the vehicle. This bill was signed by the Governor on September 9 (Chapter 457, Statutes of 1994).

AB 2333 (Morrow), as amended March 3, requires telephone, gas, and electric utilities to provide district attorney inspec-

tors and investigators with limited customer information under specified conditions with respect to investigations relating to missing or abducted children. The bill requires inspectors and investigators requesting this information to prepare and sign a written affidavit supporting the request, and provides that specified persons and entities shall not be subject to criminal or civil liability for reasonably relying on an affidavit pursuant to this provision. This bill was signed by the Governor on June 24 (Chapter 112, Statutes of 1994).

AB 766 (Hauser), as amended April 21, requires the PUC to undertake a propane safety inspection and enforcement program for propane distribution systems to ensure compliance with the federal pipeline standards by propane operators within the state, and permits the PUC to adopt rules, at least as stringent as the federal law, in order to protect the health and safety of customers served by propane distribution systems. This bill requires the State Board of Equalization and the PUC to establish a uniform billing surcharge designed to cover the cost of implementing these provisions. This bill was signed by the Governor on August 31 (Chapter 388, Statutes of 1994).

AB 860 (Pringle), as amended July 4, **SB 141 (Alquist)**, as amended July 9, and **AB 2028 (Statham)**, as amended July 1, are no longer relevant to the PUC.

The following bills died in committee: **SB 1325 (Kopp)**, which would have expressed legislative intent to eliminate the original review jurisdiction of the California Supreme Court over PUC decisions and authorize judicial review of PUC proceedings in either the Supreme Court or a court of appeal; **SB 1956 (Rosenthal)**, which would have subjected PUC agenda items regarding adjudicatory hearings to the Bagley-Keene Open Meeting Act, and prohibited serial, rotating, or seriatim meetings; **AB 2737 (Cannella)**, which would have required public utilities to provide to peace officers and to federal investigators and law enforcement officers with names, prior addresses, places of employment, and dates of service of utility customers under specified conditions; **AB 3767 (Andal)**, which would have authorized the PUC to determine that some or all nondominant telephone corporations shall be subject to registration-only regulation, subject to specified conditions, and set forth the duties and authority of the PUC in regulating these corporations (*see* MAJOR PROJECTS); **SB 1962 (Rosenthal)**, which would have required the PUC to maintain a telecommunications education program similar to its existing Telecommunications Education Trust (TET) to protect the interests of California consumers; **ACR 131 (Escutia)**, which would have requested the PUC to conduct a study on at-grade railroad crossings from the Ports of Long Beach and Los Angeles to downtown Los Angeles; **AB 3452 (Mountjoy)**, which would have required the PUC to establish only just, reasonable, and nondiscriminatory rates for dump truck carriers; **SB 320 (Rosenthal)**, which would have permitted the PUC to expand the funding base of the Universal Lifeline Telephone Service program surcharge; **AB 1386 (Moore)**, which would have—among other things—required the PUC to cause a gas corporation to publish a tariff establishing terms and conditions of wholesale gas service for a municipality within its service territory (including rates); **SB 662 (Bergeson)**, which would have required the PUC, in consultation with specified departments and representatives, to prepare and adopt a program for telecommunications services for disabled persons for motorist aid in the event of a freeway emergency; **AB 2363 (Moore)**, which would have permitted gas, heat, or electrical corporations and their subsidiaries that are regulated as public utilities by the PUC to conduct specified work if the work is incidental to another utility function and is performed by a utility employee who is present on the premises for the other function; and **AB 173 (V. Brown)**, which would have limited the amount of salary paid to the President and each member of the PUC to an amount no greater than the annual salary of members of the legislature.

FUTURE MEETINGS

The full Commission usually meets every other Wednesday in San Francisco.

STATE BAR OF CALIFORNIA

President: Margaret Morrow
Executive Officer:
Herbert Rosenthal
(415) 561-8200 and
(213) 765-1000
TDD for Hearing- and Speech-Impaired:
(415) 561-8231 and
(213) 765-1566
Toll-Free Complaint Hotline:
1-800-843-9053

The State Bar of California was created by legislative act in 1927 and codified in the California Constitution at Article VI, section 9. The State Bar was established as a public corporation within the judicial branch of government, and membership is a requirement for all attorneys practicing law in California. Today, the State Bar has over 141,000 members, which equals approximately 17% of the nation's population of lawyers.

The State Bar Act, Business and Professions Code section 6000 *et seq.*, designates a Board of Governors to run the State Bar. The Board President is elected by the Board of Governors at its June meeting and serves a one-year term beginning in September. Only governors who have served on the Board for three years are eligible to run for President.

The Board consists of 23 members—seventeen licensed attorneys and six nonlawyer public members. Of the attorneys, sixteen of them—including the President—are elected to the Board by lawyers in nine geographic districts. A representative of the California Young Lawyers Association (CYLA), appointed by that organization's Board of Directors, also sits on the Board. The six public members are variously selected by the Governor, Assembly Speaker, and Senate Rules Committee, and confirmed by the state Senate. Each Board member serves a three-year term, except for the CYLA representative (who serves for one year) and the Board President (who serves a fourth year when elected to the presidency). The terms are staggered to provide for the selection of five attorneys and two public members each year.

The State Bar includes twenty standing committees; fourteen special committees, addressing specific issues; sixteen sections covering fourteen substantive areas of law; Bar service programs; and the Conference of Delegates, which gives a representative voice to 291 local, ethnic, and specialty bar associations statewide.

The State Bar and its subdivisions perform a myriad of functions which fall into six major categories: (1) testing State Bar applicants and accrediting law schools; (2) enforcing the State Bar Act and the Bar's Rules of Professional Conduct, which are codified at section 6076 of the Business and Professions Code, and promoting competence-based education; (3) ensuring the delivery of and access to legal services; (4) educating the public; (5) improving the administration of justice; and (6) providing member services.

Almost 75% of the Bar's annual $56 million budget is spent on its new attorney discipline system. The system includes the first full-time professional court for attorney discipline in the nation and a large staff of investigators and prosecutors. The Bar recommends sanctions to the Califor-